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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/421,713 | 10/20/1999 | LARRY A. WINTER | 8567.72US01 | 4525 |

28164 7590 04/08/2005
ACCENTURE CHICAGO 28164
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CHICAGO, IL 60610

EXAMINER

ABDI, KAMBIZ

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3621

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/421,713

Applicant(s)

WINTER ET AL.

Examiner

Kambiz Abdi

Art Unit

3621

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-5 and 8-41.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Continued Below
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

JAMES P. TRAMMELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

1. Applicant's arguments filed 14 March 2005 have been fully considered but they are not persuasive for the following reasons:
2. Applicant's after final arguments received by the office on 7 March 2005 in response to the final rejection mailed on 29 December 2004 regarding rejection of independent claims 1, 27, 35, and 40-41 under 35 U.S.C. § 103 as being anticipated by U.S. Patent No. 6,343,277 to John Gaus et al. over U.S. Patent No. 6,047,274 to Jack J. Johnson et al and "CellNet Data Systems" web site content of 28 April 1998.
3. The examiner believes that the argument that the applicant has put forward in regards to claims 1, 27, 35, and 40-41 is not persuasive to overcome the prior art of record as they have been presented in their latest form filed at the above date. The reasoning behind the argument by the applicant is that the determination of price is changing at the time or after dispatch of services. It is known in the art that this type of contracts.
4. In its simplest form a homeowner has a contract with a gas or electric company at the outset of the subscription to delivery of energy services. Once the homeowner starts utilizing the services of the energy company in that particular market let's say the North East US, which supplies gas or electricity to the house hold, at the end of each month reading of the meter determines the usage amount and as well as depending on the demand or severity of the winter or summer or shortages of supplies (As we saw in the California energy crises of few years ago) the price for each unit (which is subject to change based on the demand or availability) is used to calculate a bill for the homeowner's energy usage. Therefore, it is clear that the determination of the clearing price has occurred after the dispatch of the services.
5. And it is disclosed in the Gaus that "a contract to be formed for a future energy need and does not limit contract formation to the time that the contracted for product is required." It is disclosed that Gaus is concerned and teaches the fact that a price can be changed based on conditions of the actual dispatch time (See Gaus column 2, lines 38-45, column 6, lines 21-38 and column 7, lines 12-25) or even after the services have been dispatched (The services has been delivered in the beginning of the month and the prices rise the end of the month or during the month). Gaus clearly teaches that a bid is submitted and the bid can change and be updated based on the changes in market conditions.
6. As per arguments put forward by the applicant in regards to claims 27-41, there is sufficient evidence in the teachings of Gaus to disclose the "economic merit order" (high-low delta) of the current application and discloses that sets the precedent for calculating such "economic merit order". Applicant discloses that the "economic merit order" is stacking the bids from lowest price to highest price. Examiner would like to point out that Gaus explicitly teaches such listing of the bids in figure 16, 17, 18, and 20. Also it is disclosed that a ranking method within the Gaus system ranks the bids and displays them as they have been ranked based on the prices (See Gaus column 5, line 50- column 6, line 5). However, the Gaus reference shows also the specific ranking disclosed by the applicant in page 11, lines 28-31 of the arguments. In the arguments put forward by the applicant it is suggested that the "economic merit order" is display of ranking but it is not just based on price and if there are bids that have the same price ranking is considered by other values or criteria. It is disclosed in the Gaus reference that the same type of determination is relevant as well (See Gaus figures 16-18, column 5, line 57-column 6, line 5), which provides ranking of the bids based not only on the price ranking but also on other criteria in the event of the same bid price. Also it is an obvious undersatnding of such ranking if the same price is for different bids, it could use the time that the bid was submitted, the location, the volum, or any other criteria.
7. Therefore, the examiner maintains the previous rejection of the claimed invention as they have been amended and presented in their current form and the argument put forward by the eapplicant iis not entered.